

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT K. BOERNER, JR.,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security

Defendant.

CIVIL ACTION

No. 04-1934

ORDER

May 20, 2005

On review of the Report and Recommendation of United States Magistrate Judge Charles B. Smith, dated March 31, 2005, to which no objections have been filed, it is hereby ORDERED that:

- (1) The Report and Recommendation (Docket #15) is APPROVED and ADOPTED;
- (2) The Commissioner's Motion for Summary Judgment (Docket #13) is DENIED;
- (3) The Plaintiff's Motion for Summary Judgment (Docket #11) is GRANTED insofar as the matter is remanded for further proceedings; and
- (4) This matter is REMANDED to the Commissioner for further proceedings consistent with the Report and Recommendation.

For the Court:

Pollak, J.